

10-70019

~~ERYS CONSTITUTIONAL FINRA ANSWERS
DUE PROCESS DO NOT APPLY TO FINRA
UNBEHEVABLE~~

constitutional due process do not apply to FINRA because FINRA is not a state actor." *Asensio*

& Co., Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *61 (Dec. 20, 2012); *see*

also Allen Mansfield, 1978 SEC LEXIS 2543, at *30 (Aug. 4, 1978) (holding that "[w]ith respect to the nature of the [FINRA] proceeding, Mansfield is clearly in error in attempting to equate this proceeding with a criminal action").

Moreover, *Napue* does not support Applicants' position that Enforcement counsel needed to correct the testimony of the Four Testifying Representatives. In *Napue*, the prosecuting attorney had promised his principal witness, an accomplice to the murder charged, a recommendation of a reduced sentence for his testimony against the defendant. 360 U.S. at 265-67. The prosecuting attorney filed pleadings documenting his recommendation. *Id.* at 266-67.

At the murder trial, the principal witness falsely testified that he had received no promise of consideration in exchange for his testimony, and the prosecuting attorney did not correct this false testimony. The Court held that defendant's conviction violated defendant's due process rights because the state had obtained its conviction through false evidence and allowed it to go uncorrected. *Id.* at 269.

Unlike that criminal case, here there is not a shred of evidence that FINRA's Enforcement lawyers personally knew that any statements of the Four Testifying Representatives were untrue, and any inconsistencies between the witnesses' testimony and the Emails and

Memo were immaterial to whether Black lied about inspecting the offices and the credibility of the Four Testifying Representatives. Contrary to Applicants' assertion, Enforcement was not required to correct inconsistent witness testimony on immaterial facts, especially when Applicants could have cross-examined the witnesses on these discrepancies or elicited direct testimony to the contrary. The proceedings against Black and the Firm were fair.

-38 STATE FIRM
REQUIRED TO CORRECT
LIES OF WITNESSES